

REMARKS

Reconsideration of the application, as amended, is respectfully requested.

The undersigned would like to thank Examiner Bekker for the courtesies shown him during the personal interview on Tuesday, May 24, at the U.S. Patent Office. The substance of the interview is summarized herein. In particular, the Examiner suggested amendment of the claims to indicate that in applicants' process the filled cavities are "uninhibited" so as to better distinguish the present claims from the filling device 12 which is present between the rollers illustrated in Fig. 1 of Ezaki reference.

Claim 17 is canceled without prejudice.

As seen in applicants' Fig. 1 and as recited in the present claims, in applicants' invention, frozen aerated product is filled through one or more filling devices (4 and 5) into mold cavities 3. The products are permitted to expand outside their cavities, and then the two cavities are moved opposite one another so that the frozen aerated product in each cavity is pressed against the frozen aerated product in the other cavity. As can be seen in the present examples, the products of the invention enjoy a low defect rate in the form of low numbers of "halves," i.e. products in which the two halves have not been effectively joined to form a ball.

An important distinction between the present invention and the Ezaki reference can be seen by comparing Ezaki's Fig. 1 to applicants' schematic view of the apparatus in their Fig. 1. In the Ezaki reference, filling device 12 can be seen in Fig. 1 to occupy the space between the two rollers above the point where the halves are brought together. In contrast, in Fig. 1 of the present application there is no bulky filling apparatus present

above the point of contact of the two halves to inhibit expansion of the frozen aerated confection.

In Fig. 2 of Ezaki an arrow shows air coming out of suctioning hole 31. An arrow is also present in Fig. 1 leading into Ezaki's filling hole 29. It is believed that one of ordinary skill would interpret this as meaning that pressure is imposed on the product going through filling hole 29. Further suctioning holes 30 are shown by Ezaki. Thus, the frozen confection in Ezaki appears to be under pressure, which hardly suggests permitting the product to expand as recited in the present claims.

Although Ezaki seeks to join together two halves of a confection, it does so in a different way. Ezaki describes prior efforts with respect to ice candies of simply filling the foods up to the surface levels of the depressions (periphery levels of die rolls). Unfortunately, with this approach the ice candies apparently attached to the walls of the depressions when cooled. Ezaki describes their invention as involving use of a strong force so that the food pieces filled in the compressions become mutually compressed and become connected reliably when the depressions pass through the contact area. The strong force apparently results from the fact that extra portions of the product are filled in grooves in the inner sides of a raised sliding surface so that the product is raised outwardly from the outer periphery levels of the die rolls (Ezaki, page 5).

The fact that the Ezaki approach is different is reflected in the fact that, although ice cream is mentioned at the beginning of his document, Ezaki focuses on ice candies e.g., in the "embodiment" (page 5) and the accompanying Figures. The Office points to no suggestion that these ice candies are aerated or that these candies would expand. Thus, it is unclear why one of ordinary skill would believe that the product in Ezaki's Fig. 1 is expanding or has room to expand. Moreover, given that Ezaki's solution to the problem appears to be forcing extra confection between the rollers to produce a strong

force, it is not understood how expansion of the product could be considered to be inherent, that is, inevitable, even if ice cream were used. Moreover, since Ezaki does not teach the desirability of expansion, such is not obvious either. Accordingly the invention is neither anticipated nor obvious.

The Office correctly notes that frozen confection in Ezaki is outside the open cavity prior to the open cavities' approaching one another (Office Action, page 4, last sentence). However, the Office also asserts that Ezaki teaches that there is space for the confection to expand (Office Action, page 5, first paragraph). Applicants disagree with this latter point. Ezaki teaches that there is space for something, but the space appears to be present to accommodate extra confection which is pumped in to permit the strong force to be generated to join together the two halves. It is unclear why Ezaki would leave space for expansion in the illustrated process given that the example relates to ice candies and the Office points to no indication that these are aerated.

As to use of Ezaki's process for ice cream, with hindsight one can see that expansion can be used. However, that borrows from applicants teachings, which should be ignored in the obviousness calculus; it would be mere conjecture that permitting expansion of an aerated product would assist in joining the two halves of the confection absent hindsight gleaned from the present application.

The Office suggests that the present invention results from reversing steps of Ezaki and that reversing steps of a process is obvious absent clear and convincing evidence to the contrary (citing MPEP 2144.04). Applicants submit that they are not merely reversing steps of Ezaki. Applicants join aerated expanded confection halves. Expansion of the Ezaki product, under the Office's scenario, occurs in the joined confection ball. It is submitted that expansion of two halves prior to joining is not the same step as

permitting expansion of a formed confection ball. Therefore, it is submitted that applicants' invention is not merely the result of reversing Ezaki's steps.

In order to further distinguish the present invention from Ezaki, the claims have been amended to include the "uninhibited" language suggested by the Office. As mentioned above, this further distinguishes the invention since it seems clear from Fig. 1 of Ezaki that expansion would be inhibited, particularly in view of the presence of the bulky filling apparatus 12. The uninhibited language is supported by applicants' Fig. 1. An amendment to the specification inserting language describing this is also presented, again supported by applicants' Fig. 1.

It is submitted that the secondary references do not remedy the aforementioned deficiencies in the primary reference.

For the foregoing reasons it is respectfully requested that the obviousness rejection be withdrawn.

With respect to the §112 rejection, Fig. 2 represents a longitudinal cross-section of the roller (paragraph [0028]). As explained in paragraph [0031], the roller has a cylindrical cavity 10. As explained in paragraph [0032], during operation a refrigerating medium is supplied through pipe 17 and is sprayed through a nozzle 18 into cavity 10 where it thus cools the outer wall of the cavity and thence cools the mold cavities 3. Therefore, it is submitted that the function of the internal roller cavity is clear. It is also clear that it is distinct from the cavities on the surface of the forming element which are filled with frozen confection.

Independent claims 1 and 13 have been amended to refer in element a. to a roller "cavity" rather than to "cavities" to make them consistent with earlier recitation of the roller "cavity" in the claims and to make them consistent with the specification.

With respect to the obviousness double patenting rejection, it is noted that this is a provisional rejection since the other application has not yet been granted. The application is awaiting action following prosecution and the filing of an RCE. Therefore, it would appear to be unnecessary to file a terminal disclaimer in the present application.

In view of the foregoing, it is respectfully requested that the application, as amended, be allowed. If the Examiner feels that such would expedite disposition of this application, she is invited to telephone the undersigned at the phone number listed below.

Respectfully submitted,

/Gerard J. McGowan, Jr./

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